

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LEO PRESTON,

Petitioner,

vs.

Case No. 05-CV-71276
HON. GEORGE CARAM STEEH
Crim. No. 01-CR-80845-02

UNITED STATES OF AMERICA,

Respondent.

_____ /

ORDER DENYING PETITIONER'S SEPTEMBER 29, 2005
MOTION FOR RECONSIDERATION

Petitioner Leo Preston, appearing pro per, filed a one-page September 29, 2005 motion for reconsideration of the September 19, 2005 Order dismissing his § 2255 petition, arguing the court erred by failing to address his July 14, 2005 motion to amend his petition to assert an additional claim that he was denied effective assistance of counsel when counsel failed to object to this court's denial of petitioner's right to allocution. To prevail on a motion for reconsideration, the movant must not only demonstrate a palpable defect by which the court and the parties have been misled, but also show that correcting the defect will result in a different disposition of the case. E.D. Mich. LR 7.1(g)(3). The court rejected on the merits petitioner's allegation that he was denied a right of allocution. September 19, 2005, at 3, 3 n.1. Amendment to add a claim of ineffective assistance premised on counsel's failure to object to the denial of a right of allocution would thus be futile because the amended claim would not survive a motion to dismiss. See Foman v. Davis, 371 U.S.

178, 182 (1962). Petitioner has failed to show palpable error. Accordingly,

Petitioner's motion for reconsideration is hereby DENIED.

SO ORDERED.

s/George Caram Steeh
GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE

Dated: October 3, 2005

CERTIFICATE OF SERVICE

Copies of this Order were served on the attorneys of record on October 3, 2005, by electronic and/or ordinary mail.

s/Josephine Chaffee
Secretary/Deputy Clerk